

STATE OF MONTANA
DEPARTMENT OF LABOR AND INDUSTRY
BEFORE THE BOARD OF PERSONNEL APPEALS

IN THE MATTER OF UNIT CLARIFICATION NO. 4-96:

STATE OF MONTANA, DEPARTMENT OF)	
HEALTH AND HUMAN SERVICES,)	
MONTANA DEVELOPMENTAL CENTER,)	
)	
Petitioner,)	
)	
vs.)	FINDINGS OF FACT;
)	CONCLUSIONS OF LAW;
)	AND RECOMMENDED ORDER
AFSCME LOCAL 971, MONTANA)	
DEVELOPMENTAL CENTER, AMERICAN)	
FEDERATION OF STATE, COUNTY,)	
AND MUNICIPAL EMPLOYEES,)	
AFL-CIO,)	
)	
Respondent.)	

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I. INTRODUCTION

A formal hearing in the above entitled matter was conducted on August 28, 1996, at the Montana Developmental Center, Boulder, Montana. The hearing was conducted under authority of Section 39-31-207, MCA, pursuant to ARM 24.26.630, and in accordance with the Montana Administrative Procedures Act, Title 2, Chapter 4, part 6, MCA. Petitioner, State of Montana, Department of Health and Human Services, Montana Developmental Center was represented by Bill Bentley, Labor Relations Specialist, Labor Relations Bureau, State Personnel Division, Department of Administration. Petitioner's Exhibits Nos. 1 through 32 were entered in the record. Witnesses appearing for Petitioner included Jennifer Pryor, Superintendent; David Anderson, Personnel Officer; Janis Zohner, Tray Line Supervisor; Marlene Kroll, Dietician; Barbara McMahon, Shift Manager; Tana Wing, Shift Manager; and Alan Giulio, Food Service

Supervisor. Respondent, AFSCME Local 971, Montana Developmental Center, American Federation of State, County, and Municipal Employees, AFL-CIO, was represented by Tom Foley, Field Representative, Montana Council No. 9, AFSCME, AFL-CIO. Respondent's Exhibits Nos. A through S were entered in the record. Witnesses appearing for Respondent included Bill Ryan, Cottage Shift Manager; and Bill Kraus, Cottage Shift Manager. The parties submitted post-hearing briefs in accordance with a stipulated briefing schedule.

II. ISSUE

The issue in this matter is to determine whether four Food Service Supervisor positions (Nos. 51182, 51183, 51184, and 51203) and 24 Cottage Shift Managers positions should be properly excluded from the existing bargaining unit based upon supervisory duties pursuant to Section 39-31-103(11), MCA.

III. FINDINGS OF FACT¹

1. Petitioner filed a petition for unit clarification with the Board of Personnel Appeals (Board) on December 5, 1995. The petition requested clarification of an American Federation of State, County and Municipal Employees bargaining unit at the Montana Developmental Center which covered positions including but not limited to: rehabilitation aides, transportation officers, stock clerks, cooks, custodians, food service workers, food service supervisors, resident care aides, resident care aides or cottage shift supervisors, licensed practical nurses, physical therapy technicians, teacher aides, grounds keepers, maintenance workers, and

¹All proposed findings, conclusions and supporting arguments of the parties have been considered. To the extent that the proposed findings and conclusions submitted by the parties, and the arguments made by them, are in accordance with the findings, conclusions and views stated herein, they have been accepted, and to the extent they are inconsistent therewith, they have been rejected. Certain proposed findings, conclusions and arguments may have been omitted as not relevant or as not necessary to a proper determination of the material issues presented. To the extent that the testimony of various witnesses is not in accord with the findings herein, it is not credited.

warehouse workers. The petition sought to clarify the unit by excluding four (4) food service supervisor positions and twenty-four (24) cottage shift manager positions from the bargaining unit.

2. Montana Developmental Center is a residential and training facility for profoundly and developmentally disabled individuals. The residents of MDC are housed in approximately seven (7) residences. The resident care aides staff are the primary direct care staff of the facility.

3. There are four Food Service Supervisor positions and twenty-four Cottage Shift Manager positions. The Food Service Supervisor positions have working titles of: Rotating Supervisor, Tray Line Supervisor, Late Shift Supervisor and Production Supervisor. All are assigned to the Facility Support Services Bureau and with the exception of the Tray Line Supervisor position, all work under the direction of the Food Service Manager. The Tray Line Supervisor works under the supervision of the Clinical Dietician. The Cottage Shift Managers are divided into two categories. One category consists of three Shift Managers who are Licensed Practical Nurses and work in the Health Care Unit. The remainder of the Shift Managers are not LPNs and work in the Residential and Resource Unit.

4. The Food Service Supervisor positions and the Cottage Shift Manager positions were reclassified due to campus reorganization and the assessed need for more supervision. The positions were upgraded due largely in part to the additional line supervisory duties the positions were assigned. The Food Service Supervisor positions assumed their new positions in approximately October 1995 and the Cottage Shift Manager positions assumed their new positions on June 1, 1996.

5. All incumbents of the positions at issue received additional training that addressed their additional supervisory duties. Training was provided by the Department of Administration, Department of Public Health and Human Services and Montana Developmental Center. Training consisted of information on Family Medical Leave Act, sexual harassment, grievance handling, workers' compensation claims management, investigation techniques and leave administration. Only supervisors attended this training and the training was not offered to, or attended by, any of the staff that the positions at issue supervise.

6. The Tray Line Supervisor is a grade 12 and supervises six grade 6 Food Service Workers. The entry salary of a grade 12 is \$10.124 an hour while the entry salary for a grade 6 is \$6.244 an hour. The Rotating Supervisor, Production Supervisor, and Late Shift Supervisor are all Grade 13. Grade 13 entry salary is \$11.001 per hour. The Rotating Supervisor oversees one grade 5 Intermittent Food Service Worker, and three grade 6 Food Service Driver/Aides. The Production Supervisor oversees one grade 6 Food Service Worker and two grade 8 cooks. The Late Shift Supervisor oversees one grade 6 Food Service Worker, three grade 5 Food Service Workers, and one grade 7 Custodian.

7. The Cottage Shift Managers assigned to the Health Care Unit (position nos. 51826, 51827, and 51828) are grade 13 and supervise eight to nine grade 8 Resident Care Aides and one grade 6 Laundry Worker. The remaining Cottage Shift Managers are grade 12 and supervise four to eight Resident Care Aides which are classified at either grade 7 or grade 8. The entry salary for a grade 7 is \$6.746 per hour and the entry salary for a grade 8 is \$7.312 per hour.

8. The Cottage Shift Managers and the Food Service Supervisors approve and deny leave requests by their subordinates; they approve time keeping logs; and they conduct

performance appraisals. They have the responsibilities to train employees and direct them in their work. They also assign subordinates to work stations or work duties.

9. The Cottage Shift Managers and Food Service Supervisors maintain supervisor notes and have authority to discipline subordinate employees to include recommendation of suspension or discharge. Affected Cottage Shift Managers or Food Service Supervisors sit on a panel when hiring new employees. The hiring panel is provided with a ranking of the applicants that is based upon qualifications, capabilities and seniority. However, the Cottage Shift Manager or Food Service Supervisor retains the authority to approve or disapprove the hiring of any applicant regardless of ranking.

10. The Cottage Shift Managers and Food Service Supervisors exercise their supervisory duties with independent judgment. They deny or approve leave requests and assign subordinate to work stations or duties to maintain proper care to residents. They train employees, direct employees, perform performance appraisals. They have authority to discipline subordinate employees and can effectively recommend the suspension or discharge of employees. They also effectively participate in the hiring of employees.

IV. CONCLUSIONS OF LAW

1. The Board of Personnel Appeals has jurisdiction over this matter pursuant to Section 39-31-207, MCA.

2. The Montana Supreme Court has approved the practice of the Board of Personnel Appeals in using federal court and National Labor Relations Board (NLRB) precedence as guidelines interpreting the Montana Collective Bargaining for Public Employees Act as the State Act is so similar to the Federal Labor Management Relations Act. **State ex rel Board of Personnel Appeals v. District Court**, 183 Mont. 223, 598, P.2d 1117, 103 LRRM 2297 (1979);

Teamsters Local No. 45 v. State ex rel Board of Personnel Appeals, 195 Mont. 272, 635 P.2d 1310, 110 LRRM 2012 (1981); **City of Great Falls v. Young (III)**, 211 Mont. 13, 686 P.2d 185, 119 LRRM 2682 (1984).

3. Section 39-31-103(9)(b)(ii), MCA, excludes all supervisory employees from coverage by the Public Employees Collective Bargaining Act. Section 39-31-103(11), MCA, defines a “supervisory employee” as:

“...any individual having authority in the interest of the employer to hire, transfer, suspend, lay-off, recall, promote, discharge, assign, reward, discipline other employees, having responsibility to direct them, to adjust their grievances, or effectively to recommend such action, if in connection with the foregoing, the exercise of such authority is not of a merely routine or clerical nature but requires the use of independent judgment.”

4. The existence or exercise of any one of the criteria listed in the statutory definition of a supervisory employee combined with independent judgement is sufficient to accord supervisor status, regardless of how frequently the power is executed. **George C. Foss Company v. NLRB**, 752 F.2d 1407, 118 LRRM 274 (CA 9 1985). See also UD 6-88, **Montana Federation of State Employees, Petitioner vs. Montana Developmental Center, State of Montana, Employer** (August 15, 1988); UC 9-88, **Montana Public Employees' Association, Petitioner, vs. East Mont Human Services Center, Department of Institutions, State of Montana, Respondent** (February 22, 1989).

5. The record shows that the Cottage Shift Manager and Food Service Supervisor positions meet several of the criteria to be designated as supervisors pursuant to Section 39-31-103(11), MCA. These positions effectively recommend the hiring and the suspension or termination of employees. Additionally, these positions have the authority to direct, assign, and

discipline employees. They train, approve/deny leave requests, and perform performance appraisals. The positions perform these duties using independent judgment.

IV. RECOMMENDED ORDER

IT IS ORDERED the bargaining unit at the Montana Developmental Center, which is represented by the American Federation of State, County, and Municipal Employees, AFL-CIO, Montana Counsel No. 971, be modified to exclude the Cottage Shift Manager and the Food Service Supervisor positions.

DATED this ___ day of June, 1997.

BOARD OF PERSONNEL APPEALS

By:

Stan Gerke
Hearing Officer